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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,435	07/18/2003	Thai Huynh-Ba	DCS-9179	4957

34500 7590 11/15/2006

DADE BEHRING INC.
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DEERFIELD, IL 60015

EXAMINER

LEVKOVICH, NATALIA A

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,435

Applicant(s)

HUYNH-BA ET AL.

Examiner

Natalia Levkovich

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and remarks dated 09/06/2006 have been acknowledged by the Examiner.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Link (US 6098819) in view of Mengel et al. (US 6321609).

As was previously discussed, Link teaches a magazine comprising a rectangular storage area having opposing walls 5, 6 and 7, 8. Wall 9 is located in the middle of the storage area and creates two storage compartments for holding pipette tips. Two pairs of ribs 24, 25 disposed within each storage compartment, protrude from the walls into the storage compartment. There also exists a 'fiat pad' and 'fiat ledge' which protrude into the storage compartment. Link further discloses tabs 15, 16 and hooks 21 designed to lock one rack of pipette tips to another.

Link does not teach the hinged gate, the locking means inside the magazine (versus outside, as claimed), as well as the front and back surfaces of the magazine being curved. Mengel et al disclose a magazine for holding gas sampling tubes.

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The magazine 14 has multiple compartments / slots¹⁵³ for holding the tubes (Figures 1, 6). Mengel teaches that the slots are sized corresponding to the sampling tube to be stored. The slots appear to be curved on a front and back side. Mengel further teaches a door 170 ['gate' – Ex.] to allow the tubes to pass out of the magazine and into the gas sampling system. The door pivots about a door pin / hinge and is biased closed by a torsion spring 172 (Col. 7, line 35 - Col. 8, line 6; Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have curved the walls of the magazine in the modified apparatus of Link, in order to enhance the scope of its applicability by adjusting its shape to conventional shape of related equipment, such as, for example, a loading station which in often cases can be a carousel, or a turntable. It would have been also obvious to use a hinged door as a means to hold cuvettes inside the magazine or let the cuvettes move out of the magazine. With respect to the locking means being provided on the outside of the magazine, this would have been an obvious modification so that it would be easier for a user to separate two racks manually by lifting the rack and unhooking the tabs.

Response to Arguments

4. Applicant's arguments dated 09/06/2006 have been fully considered but they are not persuasive.

Applicant states that 'if Link's magazine was modified in combination with Mengel as suggested to accommodate generally rectangular reaction cuvettes, one skilled in

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the art would provide a magazine having rectangular front and back walls'. Examiner maintains that it would have been within the ordinary skill of an artisan at the time the invention was made to have curved the walls of the magazine in the modified apparatus of Link, in order to adjust its shape to the shape of related equipment, such as a loading station which can be for example, a carousel, or a turntable. See the discussion above. Additionally, it is noted that changes in configuration or shape is usually a matter of choice, which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration is significant. See MPEP 2144.04.

Conclusion

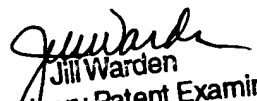
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jill Warden
Supervisory Patent Examiner
Technology Center 1700